Petition

81-1788

Supreme Court, U.S.
FILED
MAR 24 1982
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1981 NO.81-

- X

Option Advisory Service, Inc., for itself and all other investment advisers and small corporations similarly situated,

Petitioner,

-against-

Board of Governors of the Federal Reserve Systems (in re: CCAH, CCAI and FGB),

Respondent,

and

Credit and Commerce American Holdings, N.V. (CCAH), Credit and Commerce American Investment, B.V. (CCAI), and FGB HOLDING CORPORATION, (FGB),

Intervenor-Respondents.

- X

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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March 1982

QUESTIONS PRESENTED

1. Whether the First Amendment to the Constitution of the United States requires that a Court of Appeals should adjudicate on the merits, pursuant to Section 9 Bank Holding Company Act of 1956, as amended ("BHCA"), the petition of a party aggrieved by the Board's procedures in granting approval to unregistered foreign principals to acquire control of a bank holding company engaged in interstate commerce;

2. Whether one invited by a "legal notice" to comment in the public interest on a pending Section 3(a)(1) BHCA application has Article III standing to have his objections heard by the Board in accordance with Section 5 of the Administrative Procedure Act;

3. Whether a Court of Appeals has the

power to dispense with the filing of the administrative record, as mandated by Section 9 BHCA, by the Record on Review Act, 28 U.S.C. Section 2112(b) and Rule 16, F.R.App. Proc. prior to entering summary judgment dismissing the statutory petition for review of a Board order;

4. Whether the term "aggrieved party" as used by Section 9 BHCA has a "restrictive meaning" that deprives a participant in Board proceedings of the right to seek judicial review as the remedy provided by Congress pursuant to the First Amendment;

5. Whether the Board's action in this case was reasonable within the meaning of Section 202(a) of the Equal Access to Justice Act, 5 U.S.C. Section 504, 94 Stat. 2325;

6. Whether the Court of Appeals has jurisdiction to entertain the petition for review under the terms of the Misprision of

Felonies Act, 18 U.S.C. Sec. 4 where at least two felonies appear to have been committed by the applicants before the Board and their attorney-in-fact, namely, violations of the Investment Company Act of 1940 ("ICA") and violations of Section 8 of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. Section 618(a),("FARA").

7. Whether a person who answers a "legal notice" issued under the authority of Board regulations with respect to a Section 3(a)(1) BHCA application made by others does not suffer direct and palpable injury to himself where the fees, costs and expenses incurred in commenting on the application and litigating against the Board' order are not reimbursed to him pursuant to the Equal Access to Justice Act, absent an adjudication of the application as required by Section 5 of the Administrative Proce-

dure Act, 5 U.S.C. Sec. 554.

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THE PROCEEDINGS IN THE COURT OF APPEALS AND BEFORE THE BOARD

The summary judgment of the Court of Appeals has not been reported. Appellate jurisdiction was invoked pursuant to Section 9 of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1848, in the alternative pursuant to the Misprision of Felonies Act, 18 U.S.C. Section 4. The judgment will be found in

Appendix.

The Board's order of August 25, 1981 and its later decisions of September 21 and October 20, 1981 will also be found in the Appendix.

The "legal notice" pursuant to which petitioner was brought into these proceedings is reproduced in the Appendix as is the letter dated October 31, 1980 from the Federal Reserve Bank of Richmond to petitioner.

JURISDICTION

The judgment sought to be reviewed was entered on December 28, 1981.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

These are recited under the Contents of the Appendix and are set out in full therein.

STATEMENT OF THE CASE

This is a petition for certiorari by Option Advisory Service, Inc., a small business, Subchapter S corporation ("OAS") to review the summary judgment of the Court of Appeals for the Second Circuit entered on December 28, 1981. The judgment summarily dismissed a petition for review of an order entered on August 25, 1981 by the Board of Governors of the Federal Reserve System ("Board") approving an application under Section 3(a)(1) of the Bank Holding Company Act of 1956, 12 U.S.C. Section 1842(a)(1) ("BHCA") of Credit and Commerce American Holdings, N.V. of Amsterdam, the Netherlands, ("CCAH"), Credit and Commerce American Investment, B.V. ("CCAI") of Willemstad, Curacao, Netherlands Antilles to acquire control of Financial General Bankshares, Inc. ("FG"), a bank holding

company located in Washington, D.C. through FGB Holdings Corporation ("FGB") of Washington, D.C.

Appellate jurisdiction was predicated on Section 9 BHCA, 12 U.S.C. Section 1848, in the alternative, on the Misprision of Felonies Act, 18 U.S.C. Section 4.

The Court of Appeals did not require the Board to file the administrative record and rendered its judgment without same. No record exists as that term is defined by Rule 16, F.R.App.Proc. and the Record on Review Act, 28 U.S.C. Section 2112(b).

The controversy arose in the context of a "legal notice" that was published in minuscule print in the New York Times of October 13,1980. The notice invited the reader to submit written comments on the Section 3(a)(1) application to the Federal

Reserve Bank of Richmond, Virginia, a city which lies some 400 miles away from New York City. The matter is of intense interest to the people of New York City because FGB proposed to acquire the Bank of Commerce which is located at Grand Central Station in the heart of New York City.

As a resident of New York City, OAS's president requested the Richmond Reserve Bank to hold a hearing on the application in accordance with the Board's regulations, 12 C.F.R. 263.1(b)(5) and that a copy of the application be made available at the Federal Reserve Bank of New York which has regulatory jurisdiction over the Bank of Commerce, a member of the Federal Reserve System. The Reserve Bank's answer will be found in the Appendix.

On April 23, 1981, the Board's staff conducted an "informal meeting, on the

record" at its offices in Washington, D.C. Despite its prior written request, OAS was not invited to participate. Had OAS been so invited, the following facts and issues would have been made to appear on the record of that meeting:

1. that the real parties in interest applying to the Board were (i) Kamal Adham, a citizen of Saudi Arabia closely related to the royal family of Saudi Arabia, (ii) Abdullah Darwaish, a financial adviser to the Ruler of Abu Dhabi, United Arab Emirates, and (iii) Faisal Saud al Fulaij, a citizen of Kuwait;

2. that Adham, Darwaish and al Fulaij are persons in control of CCAH, CCAI and FGB, the applicants before the Board;

3. that as a result of such control, the

Change in Bank Control Act, 12 U.S.C. Section 1817(j) applies to the transaction rather than Section 3 BHCA, Riggs National Bank of Washington D.C. v. Allbritton, 516 F. Supp 164 (1981);

4. that CCAH and CCAI are foreign investment companies and FGB is a domestic investment company not registered under Section 8 of the Investment Company Act of 1940 ("ICA"), that use the mails and the instrumentalities of interstate commerce, in violation of Section 7(a)(5) ICA,for the purpose of acquiring FG, a company engaged in interstate commerce;

5. that Adham, Darwaish and al Fulaij are foreign principals as that term is defined by Section 1(b)(2) of the Foreign Agents Registration Act of 1958,("FARA") 22 U.S.C. Section 611(b)(2) who have not registered

pursuant to the Act;

6. that as unregistered foreign principals, Adham, Darwaish and al Fulaij were represented before the Board by an attorney-in-fact, Robert A. Altman, Esq., of the Washington, D.C. law firm of Clifford and Warnke, who had not himself registered as a foreign agent as a condition precedent to his representation of his foreign principals;

7. that in the absence of anyone else appearing in opposition to the application in the public interest, OAS appeared as a public interest advocate since the Board's action on a Section 3 BHCA applications is taken in the public interest, 12 C.F.R. 262.3(f);

8. that CCAH, CCAI and FGB would finance

their purchase of FG stock, which is listed on the American Stock Exchange, with the proceeds from a $50,000,000 loan from Banque Arabe et Internationale d'Investissement ("BAII") of Paris France, pledging as security all the FG stock presently owned or to be purchased by CCAH, CCAI and FGB;

9 . that BAII has a representative office at 1290 Avenue of the Americas in New York City and that the $50,000,000 loan would be syndicated to a group of banks;

10. that the bank syndicate could be funding the loan with the proceeds from sales by the individual banks of unregistered commercial paper in the United States, in apparent violation of Section 3(a)(3) of the Securities Act of 1953;

11. that the loan agreement could be in violation of the Board's Regulation U, 12 C.F.R. Part 221 (Credit by Banks for the Purpose of Purchasing or carrying Margin Stocks) and Regulation X, 12 C.F.R. Part 224, (Rules governing Borrowers who obtain Securities Credit).

The facts with respect to points (8), (9), (10), and (11) first came to the attention of OAS from FGB's Tender Offer dated March 3, 1982 to purchase any and all of the outstanding common stock of FG.

Following the entry of the Board's order, OAS requested reconsideration pursuant to the regulations, 12 C.F.R. Sec. 262.3(k). This was denied by the Board's General Counsel, acting by delegation of authority. The final step in the administrative process was exhausted on October 20,1981 when the Board denied a petition

for administrative review, 12 C.F.R. 265.3.

The petition for judicial review in the Second Circuit was filed within 30 days of the Board's August 25, 1981 order, 12 U.S.C. Section 1248.

Statement pursuant to Rule 28.1

Petitioner Option Advisory Service Inc. is a New York Corporation that was chartered in January, 1970. OAS has been registered as an investment adviser since February, 1970.

OAS has no parent, subsidiary or affiliates.

A R G U M E N T

Point I. The Court of Appeals' decision should be vacated and the case remanded for a hearing on the merits

This Court has never ruled on the "standing" issue as it is said by the lower court to arise under Section 9 BHCA. However, on February 24, 1982, this Court has ruled in No.80-988, Havens Realty Corp. v. Coleman, --- U.S. ---, that a "person aggrieved" by housing discrimination in violation of the Fair Housing Act has standing to sue under 42 U.S.C. Sec. 3610 even though he had no intention of renting or buying a house.

As a public interest advocate in this proceeding, OAS is aggrieved by the false notice that was published by CCAH, CCAI and FGB in the New York.Times and by the

Board's decision to exclude OAS from the "informal meeting on the record" of April 23, 1981. Had OAS participated in the meeting, all of its contentions (1) through (11) that are listed under the Statement of the Case, would have been made on the record, the facts in dispute would have been resolved by an administrative law judge, 12 C.F.R. 263.1(b)(5) and the law of the case would have been formulated by the Board.

Section 9 BHCA is basically the same as 42 U.S.C. Section 3610 because the catch-all phrase ("the court shall have jurisdiction * * * to require the Board to take such action with regard to the matter under review as the court deems proper") gives a court of appeals wide discretion to "borrow" from Section 3610 or, for that matter, from the Judicial Review Act, 28 U.S.C. Section 2347(b).

Section 9 BHCA was enacted a few years after the Judicial Review Act became law. It provides a relatively simple procedure for resolving procedural issues presented by a petition for review.

Point II. The Board's resistance to judicial review and to the principles of the Administrative Procedures Act is a matter of public record

Although the Administrative Procedure Act has been the law for 36 years, the Board has little use or respect for it. For example, although the Board professes to be acting in the public interest, 12 C.F.R. 262.3(f),it treats public interest advocates as its adversaries in judicial review prceedings, as here. The Board presumes to satisfy the public interest standard through comments and proposed action prepared by its own staff, contrary to Section 5(d) of the Administrative Pro-

dure Act. That Section states:

> An employee or agent engaged in the performance of investigative or presecuting functions for an agency may not, in that or a factual related case, participate or advise in the decision, recommended deci- sion, or agency review pursuant to Section 557 of this title, except as witness or counsel in public proceedings.
> * * *

Notices of pending applications under Section 3 BHCA routinely appear in the Federal Register calling for public comment. No one seems eager to submit such comment and pursue his or her rights to be heard because of common knowledge that at the administrative level, the commenter will be considered an adversary of the Board's staff and that at the judicial level, he or she would be considered an adversary of the Board.

Nor does the Board hold hearings when mandated by the statute, e.g. A.G. Becker,

Inc. v. Board of Governors etc., et al., 519 F. Supp. 602 (D.C., D.C., 1981).

Nor does the Board always publish in the Federal Register statements of general policy formulated by it. For example, the Statement of Policy on Supervision and Regulation of Foreign Bank Holding Companies relied upon by the Board in its decision at footnote 5, has not been published in the Federal Register. When, as here, judicial review is sought, the Board moves to dismiss and refuses to file the record. In this case, three Federal Statutes, Section 9 BHCA, the Equal Access to Justice Act, 5 U.S.C. Sec. 504 and the Misprision of Felonies Act, 18 U.S.C. Section 4, were construed by the Court of Appeals on the Board's motion to dismiss without the filing of the record.

Nor does the Board have any use for

the Record on Review Act, 28 U.S.C. Section 2112(b) or Rule 16, F.R.App. Proc. No record as defined by either statute or rule exists which is the reason why the Board had moved "to delay the filing of the administrative record". Using the "standing to sue" pretext as a smokescreen, the Board makes a mockery of the statutes applicable here, Section 9 BHCA, 28 U.S.C. Section 2112(b) and Rule 16, F.R. App. Proc. The result is a wholesale violation of the applicable Federal statutes, see (1) through (11) under the Statement of the Case.

The Board's peculiar modes of proceeding are not limited to this case. Two other cases as to which the time to petition this Court for certiorari has not yet run out were decided by the Second Circuit under like circumstances, No. 81-4174,

Option Advisory Service, Inc. etc. v. Board of Governors etc. and Midland Bank Limited, and No. 81-4248, Option Advisory Service Inc. v. Board of Governors etc. and Morgan Bank (Delaware). All of these cases present substantial questions under the BHCA which the Court of Appeals has not addressed because of its "standing to sue" theory in the case at bar (81-4176).

Under all of these circumstances the grant of certiorari is justified under Rule 17.1(a) of the Rules of this Court, which states, in pertinent part:

> A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
> (a) * * * ; (Where a federal court of appeals) has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned

> such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

This is certainly in the case here.

Point III. The refusal of the Court of Appeals to review this case on the merits rises to Constitutional dimensions

The First Amendment to the Constitution of the United States states:

> Congress shall make no Law * * * abridging the right of the people to petiton the Government for the Redress of Grievances.

Congress has not enacted any such law as a part of the BHCA but the Second Circuit has made its own case law under Section 9. Drawing upon two of its decisions that have not been reviewed by this Court, Independent Investor Protective League v. S.E.C. 495 F. 2d 311 (2nd Circ., 1974) and Option Advisory Service, Inc. v. S.E.C., 668 F. 2d 120 (2nd Circ., 1981), the Second Circuit has formulated a case law on standing to sue

that eliminates for practical purposes the Section 9 remedy created by Congress.

Under the First Amendment, the Second Circuit's case law is unconstitutional, yet it is well settled that Constitutional questions should be avoided whenever possible. In the case at bar, this would be possible if a remand were ordered for a decision on the merits.

The function of a court of appeals is to determine whether the lower court or administrative agency has properly applied the standing test of Article III, Coles v. Havens Realty Corporation, 633 F. 2d 384, 387, 390 (4th Circ., 1981), affirmed on February 24, 1981 sub nom. Havens Realty Corporation v. Coleman, --- U.S. ---, No. 80-988.

At the administrative level, the Board has not made any such determination. Instead, for the first time, the Board raised the standing

issue in its motion to dismiss and the Second Circuit made the finding of fact and the standing to sue determination without the certified record being before it.

A controversy created by a person invited by legal notice to comment on a Section 3(a)(1) BHCA application is justiciable under Article III. The proceeding involves the public interest that was not represented here by anyone else. The Second Circuit should have resolved the issues on the merits, just as the Fourth Circuit did in Havens Realty.

Point IV. Petitoner has suffered distinct and palpable injury to itself as a result of commenting and litigating against the Board's order

A person who is invited by a "legal notice to comment on a Section 3(a)(1) BHCA application is also being invited to spend time, effort and money in submitting his comments and litigating

against the Board. Such a peron is a "party" to the proceeding even though his participation may be limited. Section 2(a) of the Administrative Procedure Act, 5 U.S.C. Section 551(3) states:

> "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes.

Section 2(a)(2), 5 U.S.C. Section 551(2) states:

> "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

Thus, a person who submits his comments and litigates the issues in the public interest, as here, has the right to expect that his fees, costs and expenses will be reimbursed to him as provided by the Equal Access to Justice Act, 5 U.S.C. Section 504(a)(1) and (b)(1), 94 Stat. 2325 which became effective October 1, 1981.

Where, as here, the Board has unreasonably, arbitrarily and capriciously failed to adjudicate on the record the section 3(a)(1)

application of CCAH, CCAI and FGB, petitioner is left without remedy under Section 504.

The Equal Access to Justice Act was enacted for the purposes therein stated, see note to Section 504. The Act is before this Court for the first time since it became effective on October 1, 1981 as to all cases then pending, as the instant case. The Act should be first construed by the Court of Appeals on the merits and not on a motion to dismiss without the administrative record being before it.

Since the Second Circuit has so for departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the Board, its judgment of December 28, 1981 should be vacated and the cause remanded for judgment on the merits.

Respectfuly submitted:

Antonio C. Martinez
Attorney for Option Advisory
Service, Inc.,Petitioner
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New York, N.Y. 10014
(212) 989-0404

Appendix

81-1788

Supreme Court, U.S.
FILED
MAR 24 1982
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1981 NO.81-

- - - -

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT
No. 81-4176

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of December one thousand nine hundred and eighty-one.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in the unrelated cases before this or any other court.

Present:
HONORABLE WILFRED FEINBERG
Chief Judge
HONORABLE J. EDWARD LUMBARD
Circuit Judge
HONORABLE JOHN R. BARTELS *
District Judge

----------X

OPTION ADVISORY SERVICE, INC., for itself and all other investment advisers and small corporations similarly situated,

Petitioners,

-against-

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (in re: CCAH, CCAI

and FGB),

Respondent,

-and-

CREDIT AND COMMERCE AMERICAN HOLDING, N.V., CREDIT AND COMMERCE AMERICAN INVESTMENT, B.V., AND FGB HOLDING CORPORATION,

Intervenor-Respondents.

----------X

These motions arise in the context of a petition sought by Option Advisory Service, Inc. (OA) to review an order of the Board of Governors of the Federal Reserve System (the Board) approving the application of Credit and Commerce American Holdings, N.V., Credit and Commerce American Investment, B.V., and FGB Holding Corporation to acquire control of Financial General Bankshares, Inc.

The Board moves to dismiss OA's petition for lack of jurisdiction. We grant this motion on the ground that OA

lacks standing to seek review under 12 U.S.C. Section 1848. "Aggrieved party" as used in that statute has a restrictive meaning. Petitioner must either allege a direct injury or demonstrate that he is within the zone of interests protected by the Bank Holding Company Act, cf., e.g., Independent Investor Protective League v. SEC, 495 F.2d 311 (2d Cir. 1974); Option Advisory Service, Inc. v. SEC.,668 F.2d 120 (2nd Circ. 1981). Furthermore, the Equal Access to Justice Act, 5 U.S.C. Section 504, and the Misprision oF Felonies Act, 18 U.S.C. Section 4, do not confer standing, see Option Advisory Service, Inc., v. SEC, supra.

The Board also moves for permission to file a memorandum of law in excess of ten pages and to delay filing the administrative record. We grant for former

motion and deny the latter as moot.

/s/

WILFRED FEINBERG,
Chief Judge

/s/

EDWARD LUMBARD,
Circuit judge

/s/

JOHN R. BARTELS,
District Judge

*Honorable John R. Bartels, Senior United States District judge for the Eastern District of New York, sitting by designation.

BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551
October 20, 1981

Mr. William Leighton
President
Option Advisory Service, Inc.
P.O. Box 34
Village Station
New York, New York 10014

Dear Mr. Leighton:

I am writing in reference to your petitions of September 23, 1981, pursuant to section 265.3 of the Board's Rules Regarding Delegation of Authority (12 C.F.R. ss.265.), requesting that the Board review the September 21, 1981 actions of the General Counsel of the Board. The General Counsel had determined that your September 5, 1981 request for reconsideration of the Board's action of August 25, 1981, approving the application of Midland Bank Limited, London, England, to become a bank holding company by acquiring Crocker National Corporation, San Francisco, California, and your September 11, 1981 request for reconsideration fof the Board's action approving the application by Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles, Credit and Commerce American Investment, B.V., Amsterdam, The Netherlands, and FGB Holding Corporation, Washington, D.C., presented no new facts that were not before the Board when it considerated the application and, accordingly, should be denied.

In accordance with section 265.3 of the Board's Rules Regarding Delegation of Authority, your petitions have been provided to the Board and your comments have been considered. The Board believes that for the reasons specified in the Secretary of the Board's letter of September 21, 1981, your requests for reconsideration should be denied. Accordingly, the Board determined on October 20, 1981, not to review the General Counsel's actions in these matters.

Very truly yours,
/s/ William W. Wiles
Secretary of the Board

cc: Federal Reserve Bank of Richmond
Federal Reserve Bank of San Francisco
Mr. Edward Bransilver
Mr. Robert Altman.

BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551
September 21, 1981

Mr. William Leighton
Option Advisory Service, Inc.
P.O. Box 34
Village Station
New York, New York 10014

Dear Mr. Leighton:

I am writing in response to your letter of September 5, 1981, requesting the Board to reconsider its action of August 25, 1981 relating to the approval of the applications by Credit and Commerce American Holdings, N.V., Willemstad, Netherlands Antilles; Credit and Commerce American Investment, B.V., Amsterdam, The Netherlands; and FGB Holding Corporation, Washington, D.C., to become bank holding companies by acquiring Financial General Bankshares, Inc., Washington, D.C.

Section 262.3(k) of the Board's Rules of Procedure provides that the General Counsel of the Board shall determine whether to grant a request for reconsideration. It is the General Counsel's judgment that you have not satisfied the requirements of section 262.3(e) of the Board's Rule of Procedure (12 C.F.R. Section 262.3(e)) to qualify as a party ot these applications. Nevertheless, the General Counsel has considered your request and determined that it presents no relevant facts that, for good cause shown, were not previously presented to the Board. Accordingly, pursuant to the authority delegated by the

Board to the General Counsel in section 265.2(b)(7) of the Board's Rules Regarding Delegation of Authority, and after consultation with the Directors of other interested Divisions of the Board or their designees, your request for reconsideration is hereby denied.

Very truly yours,
/s/ William W. Wiles
Secretary of the Board

cc: Federal Reserve Bank of Richmond
Mr. Robert Altman

FEDERAL RESERVE SYSTEM

CREDIT AND COMMERCE AMERICAN HOLDINGS N.V.
CREDIT AND COMMERCE AMERICAN INVESTMENT, B.V.
FGB HOLDING CORPORATION

Order Approving Formation of Bank Holding Companies
(footnotes on pages 55-56)

Credit and Commerce American Holdings, N.V. ("CCAH"), Willemstad, Netherlands Antilles; Credit and Commerce American Investment, B.V. ("CCAI"), Amsterdam, the Netherlands; and FGB Holding Corporation ("FGB"), Washington, D.C., have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. section 1842(a)(1) to become bank holding companies through the acquisiton by FGB of up to 100 percent of the voting shares of Financial General Bankshares, Inc. ("FG"), Washington, D.C. FG is a grandfathered multi-state bank holding company with subsidiary banks in Maryland, New York,

Tennessee, Virginia and the District of Columbia. 1/

Applicants have also applied under section 4(c)(8) of the Act (12 U.S.C. Sec.1843(c)(8) and section 225.4(b)(2) of the Board's Regulation Y (12 C.F.R. Sec.225.4(b)(2) for permission to acquire indirectly as an incident to their acquisition of FG, shares of National Mortgage Corporation and Money Exchange Services, Inc., both of Washington, D.C. These companies are existing nonbanking subsidiaries of FG. National Mortgage Corporation, is a small, presently inactive, mortgage banking company, and Money Exchange Service Corporation provides electronic data processing services for certain affiliated banks. Such activities have been determined by the Board to be closely related to banking (12 C.F.R. Sec.

225.4(a)(1) and (8).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with sections 3 and 4 of the Act (45 Fed. Reg. 85,521 (1980), and the time for filing views and comments has expired. The Board has considered the applications and all comments received, including those of the Commissioner of Financial Institutions for the State of Virginia and several shareholders of FG, 2/ in light of the factors set forth in section 3(c) of the Act (12 U.S.C. Sec. 1842(c) and the considerations set forth in section 4 of the Act.

CCAH and CCAI first applied to acquire FG in November 1978. The applications grew out of Securities and Exchange Commision ("SEC") allegations that certain

individuals, some of whom are principals of CCAH and CCAI, had violated section 13(d) of the Securities and Exchange Act of 1934 by acquiring, as a group, more than 5 percent of the equity securities of FG without making appropriate filings with the Sec. Without admitting or denying these allegations, the defendant entered into a consent agreement with the SEC; according to the terms of that agreement certain of the defendants represented that they intended to make a tender offer for any and all shares of FG at the previously highest offered priced, subject to obtaining appropriate regulatory approvals. CCAH and CCAI were created as the vehicles for making the tender offer.

When these applications were first filed in 1978, the Commissioner of Financial Instutitions of the State of

Virginia, the Commissioner of Banking of the State of Tennessee, and the Bank Commissioner of the State of Maryland, as well as the management of FG, objected to the applications. In addition, the Attorney General of the State of Maryland issued an opinion interpreting a section of Maryland State law to preclude unfriendly affiliations. Since the Maryland State bank affiliate of FG was objecting to the proposal, the Attorney General found that the proposed acquisition of FG would violate Maryland law. The Board decided to address this legal issue before acting on the merits of the application, and by Order dated February 16, 1979 (65 Federal Reserve Bulletin 254 (1979)), determined that it was precluded by law from approving the applications. 3/

In July 1980, CCAH and CCAI and their

principals, and FG entered into a definite agreement for the sale of FG's voting shares to CCAH and CCAI. This agreement concluded the struggle over control of FG between FG's manangement and CCAH and CCAI and their principals, and led to the filing of the subject applications.

Applicants are non-operating corporations organized for the purpose of becoming bank holding companies by acquiring FG. CCAH, a corporation organized under the laws of the Netherlands Antilles, owns all outstanding shares of CCAI, whic is organized under the laws of The Netherlands. CCAI, in turn, owns all of the outstanding shares of FGB, a corporation chartered under the laws of the State of Virginia. Upon acquisition of FG (total depostis of $2.1 billion), Applicants would control 10.2 percent of

total deposts in commercial banks in the District of Columbia, 4.7 percent of such deposits in Virginia, 2.2 per cent in Maryland, and negligible percentages of such deposits in New York and Tennessee. 4/ Inasmuch as Applicants and their principals control no other banks and engage in no nonbanking business in the Unted States, consummation of the transaction would have no adverse effects on either existing or potential competition in any relevant area. Therefore, competitive considerations are consistent with approval of the applications.

The financial and managerial resources of Applicants, FG, and its subsidiary banks are considered generally satisfactory and the future prospects of each appear favorable. The proposed transaction would provide FG with $12 million in new capital.

Moreover, the Board expects Applicants to serve as a continuing source of strength to FG and its subsidiary banks, and Applicants recognize their responsibility to do so. Although Applicants will incur $50 million in debt in connection with this proposal, Applicants have made certain commitments that ensure that they will be able to service the debt without adversely affecting the financial position of FG or its subvsidiary banks. Also, as part of the proposal, Applicants have stated they will not be paying any dividends to their principals in the near future. In the Board's judgment, banking factors are consistent with approval.

Convenience and needs considerations relating to this proposal are favorable. The additional capital to be injected into FG's subsidiary bank is expected to

strengthen the organization and allow it to provide new services to the public. Applicants plan to increase the competitive posture of FG by expanding the branch networks of its subsidiary banks, increasing commercial lending and services, and establishing an international department at the New York City subsidiary bank. The Board finds that considerations relating to the convenience and needs of the communities to be served lend some weight toward approval of these applications. It is the Board's judgment that, with respect to the applications filed under section 3 of the Act, consummation of the proposal would be in the public interest and these applications should be approved.

In reaching these conclusions, the Board considered the public comments

received on these applications, and has given particular attention to the submissions made by the Commissioner of Financial Institutions for the State of Virginia (the "Commissioner"). The Commissioner made a timely recommendation of denial of these applications, which would ordinarily require the Board, in accordance with section 3(b) of the Act (12 U.S.C. Secion 1842(b)), to order a formal hearing on the applications. However, the Commissioner subsequently concurred in a decision by the Virginia State Corporation Commission to withdraw the request for a formal hearing.

The Board determined it would be useful for Board and Reserve Bank staff to conduct an informal meeting, on the record, to be attended by representatives of CCAH and CCAI. The bank supervisors for the

State of Maryland, New York, Tennessee and Virginia, and the Comptroller of the Currency were invited to participate. Only the Commissioner decided to participate in this proceeding held at the Baord on April 23, 1981, while all the other invited parties, except for the banking department of the state of Tennessee, sent representatives as observers.

The Commissioner was given an opportunity to submit written questions to the Applicants, make an oral presentation at the meeting, and submit a closing statement in response to issues and questions raised by representatives of CCAH and CCAI at the meeting. The Board has examined carefully all of these comments, and applicants' responses thereto, and determined that while the Commissioner has raised issues regarding foreign

acquisitions of U.S. banks and superivsory and regulatory issues related to such acquisitions, there matters were addressed responsively by Applicants, and, in certain instances, have previously been addressed by the Board itself. 5/ Accordingly, the Board finds that the objections of the Commissioner do not warrant denial of these applications.

With respect to the applications to acquire FG's nonbank subsidiaries, the Board has determined that the balance of public interest factors prescribed by section 4(c)(8) of the Act favor approval of FG's retention of National Mortgage Corporation (65 Federal Reserve Bulletin 72 (1979)). Nothing in the record suggests that Applicants' acquisition of FG would alter the balance. Money Exchange Services, Inc. provided data processing

services to FG's subsidiary banks. It does not appear that the acquisition of this company would have any adverse effect on competition in any relevant area. There is no evidence in the record that consummation of the proposal would, with respect to these applications, result in undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices or other adverse effects on the public interest. Accordingly, the Board has determined that the balance of public interest factors it must consider under section 4(c)(8) of the Act favors approval of the applications filed under that section, and that these applications should be approved.

On the basis of the record, the Applications are approved for the reasons summarized above. The acquisition of FG

shall not be made before the thirieth calendar day following the effective date of this Order, or later than three months after the effective date of this Order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond pursuant to delegated authortity. The determination as to Applicant's acquisition of FG's nonbank subsidiaries under section 4(c)(8) of the Act is subject to the conditions set forth in section 225.4(c) of Regulation Y, and to the Board's authority to require such modification or termination of the activities of the holding ocmpany or any of its subsidiaries as the Board finds necessary to assure complaince with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By Order of the Board of Governors, 6/ effective August 25, 1981.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board

(seal)

FOOTNOTES

1/ FG's subsidiary banks are First American Bank, N.A., District of Columbia; Eastern Shore National Bank, Pocomoke City, and First American Bank of Maryland, Silver Spring, Maryland; Community State Bank, Albany, and Bank of Commerce, New York City, New York; Valley Fidelity Bank and Trust Company, Knoxville, Tennessee; and the following Virginia Banks: First American Bank of Virginia, Mclean; The Valley National Bank, Harrisonburg; the Peoples National Bank of Leesburg, Virginia; The First National Bank of Lexington, Lexington; The Round Hill National Bank, Round Hill; and Shenandoah Valley National Bank, Winchester.

2/ The Board has determined that the shareholder protests do not raise issues that would warrant denial of the application.

3/ In that Order the Board also determined that section 3(d) of the Act (12 U.S.C. Section 1842(d), which generally prohibits the Board from approving an application by a bank holding company to acquire voting

shares of banks in more than one state, was not applicable to the proposed transaction. While the Board determined that section 3(d) applies to the formaton of a multi-state bank holding ocmpany as well as the expansion of an existing multi-state bank holding company, the Board held that the Congressional intent of prohibiting the formation and limiting the expansion of such holding companies would be preserved even if the Board approved those applications. The Board reached this determination since the acquisiton of FG by these two shell corporations would increase neither the number of multi-state bank holding companies nor the number of out-of-home state banks owned or controlled by FG (65 Federal Reserve Bulletin at 255-56).

4/ Banking data are as of March 31, 1980.

5/ In its February 23, 1979 "Statement of Policy on Supervision and Regulation of Foreign Bank holding Companies," the Board endorsed the principle of national treatment, or nondiscrimination, as a basis for the rules governing the entry and subsequent operations of foreign banks in this country. The Board noted that the International Banking Act of 1978 generally incorporates the principle in its provisions.

6/ Voting for these actions: Chairman Volcker and Governors Schultz, Wallich, Partee and Gramley. Absent and not voting: Governors Teeters and Rice.

FEDERAL RESERVE BANK OF RICHMOND
Richmond, Virginia 23261

October 31, 1980

Mr. William Leighton, President
Option Advisory Srvice, Inc.
P.O. box 34
Village Station
New York, NY 10014

Dear Mr. Leighton:

Theis will acknowledge receipt of your letter dated October 24, 1980, in which you expressed your views regarding the publication of the notice of the intent by Credit and Commerce American Holdings, N.V., and Credit and Commerce Amercian Investments, B.V., to acquire up to 100% of the voting shares of Financial General Bankshares, Inc., Washington, D.C.

The application by Credit and Commerce American Holding and Credit and commerce American Investment has not been accepted by this Reserve Bank for processing. When the application is accepted, you will be advised, and notice of acceptance will be published in the Federal Register, establishing a period for comments. The application may be examined at hte offices of the Board of Governors of the Federal Reserve System in Washington, D.C. and at the Federal Reserve Bank of Richmond. If you wish, a copy of the application will be mailed to you at a charge of ten cents per page.

Very truly yours,
/s/ Lloyd W. Bostian, Jr.
Vice President

LEGAL NOTICE

NOTICE REGARDING FEDERAL RESERVE BOARD

APPLICATION TO ACQUIRE FINANCIAL GENERAL BANKSHARES, INC.

Credit and Commercial American Holding, N.Y. ("CCAH"), a Netherlands Antilles corporation and Credit and Commerce American Investment, B.V. ("CCAI"), a Netherland corporation and wholly-owned subsidiary of CCAH, are filing an Application (the "Application") with the Board of Governors of the Federal Reserve System (the "Board") for prior approval to become bank holding companies purusant to the Bank Holding Company Act of 1956, as amended. In the Application, CCAH and CCAI propose that CCAI make a tender offer (the "Offer") for any and all shares of common stock, par value $.10 per share ("Shares"), of Financial General Bankshares, Inc. ("FGB"), a Virginia Corporation, not owned by CCAI at the time of the Offer if made.

If the Application is approved by the Board, if other applicable regulatory approvals are received by CCAH and CCAI with respect to the Offer, and if CCAI purchases Sahres which will result in CCAH and CCAI obtaining control of FGB, CCAH and CCAI will indirectly control FGB's subsidiary banks, including BANK OF COMMERCE, whose head office is lcoated at 56 East 42nd Street, New York, New York 10017, The principal office of FGB is located at 1701 Pennsylvania Avenue, N.W. Washington, D.C. 20006.

CCAH and CCAI invite you to submit written comments upon the Application within thirty days to the Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, Virginia 23261, to the attention of Mr. Lloyd W. Bostian, Jr.

(From the New York Times October 13, 1980)

Constitution of the United States
Article III : Section 2
The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority; * * * to Controversies to which the United States shall be a Party. * * * In all other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. * * *

Amendment 1: Congress shall make no law * * * abridging * * * the right of the people to petition the Government for a Redress of Grievances.

Administrative Procedure Act, 5 U.S.C. Section 554, Adjudications
(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, * * *

(b) * * * An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings.

Bank Holding Company Act of 1956, as

amended, 12 U.S.C. Section 1841
Section 3(a)(1), 12 U.S.C. 1842(a)(1)
Acquisition of bank shares or assets.
Prior approval of Board as necessary
exceptions disposition, time
extensions; subsequent approval or
disposition upon disapproval.

It shall be unlawful, except with the prior approval of the Board (1) for any action to be taken that causes any company to become a bank holding company; (2) for any action to be taken that causes a bank to become a subsidiary of a bank holding company;
* * *

Section 9, 12 U.S.C. Section 1848;

Any party aggrieved by an order of the Board under this chapter may obtain a review of such order in the United States Court of Appeals within any circuit wherein such party has its principal place of business or in the Court of Appeals in the District of columbia, by filing in the court, within thirty days after the entry of the Board's order, a petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28. Upon the filing of such petition the Court shall have the jurisdiction to affirm, set aside, or modify the order of the Board and to require the Board to take such action with regard to the matter under review

as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

Change in Bank Control Act, 12 U.S.C. Section 1817(j), Change in control of insured banks

(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured bank through a pruchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank unless the appropriate Federal banking agency has been given sixty days prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or extending for up to another thrity days the period during which such a disapproval may issue. * * *

(16) This subsection shall not apply to a transaction subject to section 1842 or section 1828 of this title.

Equal Access to Justice Act, 5 U.S.C. 504 94 Stat. 2325

Finding and Purpose. Section 202(a) The Congress finds that certain individuals, partnerships, corporations, and labor or other organizations may be deterred from seeding review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings. * * *

Cost and fees of parties, Section 203(a)(1)
An agency that conducts an adversary adjudication shall award, to the prevailing party other than the United Statates, fees and other expenses incurred by that party in connection with that proceeding * * *

(b)(1) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable costs of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney and agent fees.

Foreign Agents Registration act of 1938, as amended, 22 U.S.C. Section 611 et seq.

Section 611. Definitions

As used in and for the purpose of this subchapter-

* * * (b) the term "foreign principal" includes- * * * (2) a person outside of the United states, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States: * * *

(c) Except as provided in subsection (d) of this section, the term "agent of a foreign principal" means-

(1) any person who acts as an agent, reprentative, employee, or servant, or any person who acts in any other capacity at the order request or under the direction or control, of a foreign principal * * * and who directly or through any person-

* * * (iv) within the United States represents the interest of such foreign principal before any agency or official of the Government of the Unitd States; * *

Section 618. Enforcement and penalties (a) Violations; false statements and willful omissions

Any person who - (1) willfully violates any provision of this subchapter or any regulation thereunder * * * shall, upon conviction thereof be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both * * *

Investment Company Act of 1940, 15 U.S.C. Section 80a

Section 7. Transactions by Unregistered Investment Companies

(a) No investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 8, shall directly or indirectly -

(5) control any company which is engaged in any business in interstate commerce.

Section 8. Registration of Investment

Companies
(a) Any investment company organized or otherwise created under the laws of * * * a State may register for the purpose of this title by filing with the Commission a notification of registration in such form as the Comission shall by rules and regulations prescribe as necessary and appropriate in the public interest or for the protection of investors. * * *

Penalties. Section 49. Any person who willfully violates any provison of this title or of any rule, regulation or order hereunder, * * * shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both; * * *

Judicial Review Act, 28 U.S.C. Section 2112(b)

Petitions to review; proceedings * * *
(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall--

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;
(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or
(3) transfer the proceedings to a district court for the district in whic the petitioner resides or has its principal office for a hearing and determination as if the proceedings

were originally initiated in the district court, when a hearing is not required by law and a genuine issued of material fact is presented. the procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

Misprision of Felonies Act,
18 U.S.C. Section 4

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible made known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

Record on Review Act,
28 U.S.C. Section 2112(b)

The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the said rules of the court of appeals may require to be included therein, * * *

Securities Act of 1933, Release No.33-4412

Interpretation of Section 3(a)(3)
26 Fed. Reg. 9158 (1961)

The Securities and Exchange Commission has received numerous inquiries concerning Section 3(a)(3) of the Securities Act of 1933. This section exempts from the registration and prospectus requirements of Section 5 of that Act:

Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

Federal Rules of Appellate Procedure
Rule 16. The record on Review or Enforcement
(a) Composition of the Record. the order sought to be reviewed or enforced, the findings or report on which it is based and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency. * * *
Code of Federal regulations, Banks and Banking, 12 C.F.R.

Part 221, Regulation U - Credit by Banks for the purpose of Purchasing or Carrying Margin Stock
Section 221.1 General rule
(a) Purpose credit secured by stock.
(1) Except as provided in subparagraph (2) of this paragraph (a) and in 221.3(q) no bank shall extend credit secured directly or indirectly by any stock for the purpose of purchasing or carrying any margin stock in an amount

exceeding the maximum loan value of the collateral, as prescribed from time to time for stocks in 221.4 (the Supplement to Regulation U) and as determined by the bank in good faith for credit subject to 221.3(s) for any collateral other than stocks: * * *

Section 221.2 Exceptions to general rule * * * (1) any credit extended outside the States of the United States and the District of Columbia; * * *

Part 224, Regulation X, Rules governing Borrowers who obtain Securities Credit

Section 224.1 Scope of part. * * * This part (Regulation X) implements Section 7(f) of the Act and generally applies to borrowers who are :

(a) Persons who obtain credit from within the united states or

(b) Those persons who obtain credit from outside the United States who are

(1) U.S. persons,

(2) Foreign persons who are controlled by U.S. persons, or

(3) Foreign persons acting on behalf of or in conjunction with U.S. persons.

Part 262, Rules of Procedure
Section 262.3(f), Action on Applications
The Board takes such action as it deems appropriate in the public interest. Such documents as may be necessary to carry out any decision by the Board are prepared by the Board's staff. With respect to actions taken

by a Federal Reserve Bank of behalf of the Board under delegated authority, statements and necesary documents are prepared by the staff of such Federal Reserve Bank.

Section 262.3(k) Reconsideraiton of certain Board actions. the Board may reconsider any action taken by it on an application upon receipt by the Secretary of the board of a written request of reconsideration from any party of such application, on or before the 15th day after the effective date of the Board's action.
* * *

Part 263, Rule of Practice for Hearings
Section 263.1 Authority, purpose, and scope.
* * * (b) Purpose and scope. This subpart prescribes rules of practice and procedure governing adjudications as to which a formal hearing is required by law or is for other reason ordered by the Board. These adjudications include * * *
(5) Adjudications under section 2,3, or 4 of the Bank Holding Company Act 12 U.S.C. 1841, 1842, or 1843).

Section 265.3 Review of Action at delegated level.

Any action taken at a delegated level shall be subject to review by the Board only if such review is requested by a member of the Board either on the member's own initiative or on the basis of a petition for review by any person claiming to be adversely affected by the action. Any

such petition for review must be received by the Secretary of the Board not later than the fifth day after the date of such action. * * *